No. 89-427

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *et al.*,
Petitioners,

v.

THE LONG ISLAND RAILROAD COMPANY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONERS

Of Counsel:
ALLISON BECK
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20036

JOSEPH GUERRIERI, JR.
(Counsel of Record)
RICHARD RUDA
MICHAEL G. DZIALO
GUERRIERI, EDMOND & JAMES
1150 17th Street, N.W.
Washington, D.C. 20036
(202) 296-7002
Attorneys for Petitioners

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ARGUMENT

The respondents' briefs in opposition attempt to prove that black is white; not surprisingly, their arguments against the grant of *certiorari* do not survive reasoned scrutiny.

1. The basic issue here, as the court of appeals framed it, is whether "the sympathy strike which [the Unions] propose is not a 'dispute' between the Unions and the Railroads, and therefore is not subject to the resolution procedures of the RLA." Pet. App. 22a.

The respondents argue that there is no circuit conflict on that question. Amtrak Br. in Opp. 1-2; LIRR Br. in Opp. 5-6. The court of appeals, however, *candidly acknowledged* that the unions' position "is not without case support." Pet. App. 22a (collecting cases). Most to the point in this regard, the Eleventh Circuit in *Eastern Air Lines v. Air Line Pilots Ass'n, Int'l*, No. 89-5229 (11th Cir. Mar. 24, 1989), ruled that a union engaged in a sympathy strike

> is not on strike over whether its strike is permitted by [its] present contract with [the carrier]; thus, the strike is not over a minor dispute under the RLA. Accordingly, an injunction cannot be warranted on this ground. *See Jacksonville Bulk Terminal v. Intern. Longshoremen's Ass'n*, 457 U.S. 702 (1982) (a National Labor Relations Act case). [Pet. App. 95a n.2]

To be sure, respondents cite court of appeals cases in line with the decision below and contrary to the *Eastern Air Lines v. ALPA* decision as if doing so somehow advances their position. *See* Amtrak Br. in Opp. 2; LIRR Br. in Opp. 6. But such disagreements are the stuff from which a circuit conflict requiring this Court's resolution is made.[1]

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[1] We note that aside from this case respondents cite another recent case pending before this Court, *Southeastern Pa. Transp. Auth. v. Signalmen*, 822 F.2d 778 (3d Cir. 1989), *petition for cert. filed*, No. 89-756, Nov. 13, 1989; a case holding that an injunction against a sympathy strike could issue if the district court was "satisfied that the sympathy strike clearly violates the no-strike clause or a controlling provision of the RLA," *Trans International Airlines v. Teamsters*, 650 F.2d 949, 966 & n.13 (9th Cir. 1980) (Kennedy, J.), *cert. denied*, 449 U.S. 1110 (1981); and a case that contains no reasoning and no citation to authority in support of the court's summary decision to enjoin a sympathy strike. *Northwest Airlines v. ALPA*, 442 F.2d 246, 249 (8th Cir. 1970), *aff'd*, 442 F.2d 251 (8th Cir.), *cert. denied*, 404 U.S. 871 (1971).

[Continued]

2. Respondents attempt to wish away the conflict on whether the Railway Labor Act authorizes *status quo* injunctions at all by stating:

> Regardless of whether carrier action may be enjoined pending arbitration, that issue *has nothing at all to do* with whether strikes may be enjoined. . . . [C]ourts simply do not equate strike injunctions with injunctions against other kinds of contract violations. [LIRR Br. in Opp. 7 (emphasis added). *See also* Amtrak Br. in Opp. 3.]

The one-sided rule that only union contract breaches—and not carrier contract breaches—justify *status quo* injunctions is, we submit, so unfair on its face as to be untenable. And the D.C. Circuit and First Circuit cases we cited at Pet. 13 do not embrace that rule.[2]

3. Respondents attempt to distinguish *Buffalo Forge Co. v. Steelworkers*, 428 U.S. 397 (1976), on the theory

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[1] [Continued]

On respondents' own showing there is a three-way split in the circuits: The Eleventh and the Fifth Circuits say no injunctions may issue in sympathy strike cases; the Second and Third Circuits say injunctions may issue if the carrier has an arguable "no strike" contract claim; and the Ninth Circuit says an injunction may issue if the carrier can show a clear "no strike" clause violation.

[2] *See ALPA v. Eastern Air Lines*, 863 F.2d 891, 895-96 (D.C. Cir. 1988) ("the arbitration board's jurisdiction over minor disputes is exclusive; the courts do not have jurisdiction to issue status quo injunctions"); *IAM v. Eastern Air Lines*, 826 F.2d 1141, 1145 (1st Cir. 1987) ("The policy against judicial involvement in labor disputes by way of injunctive relief is so strong that not even the specter of a national paralysis of the railroads by reason of secondary boycotts was considered sufficient to overcome Congress' withdrawal of jurisdiction.").

While respondents also rely on the long-settled rule that "[c]ourts may enjoin strikes arising out of minor disputes," *Consolidated Rail Corp. v. RLEA*, 109 S.Ct. 2477, 2481 (1989) (citing *Trainmen v. Chicago R. & I.R. Co.*, 353 U.S. 30 (1957)), the question decided in *Chicago River* is, as we have explained, entirely separate from the question presented here. *See* Pet. 11-12.

that the National Labor Relations Act "expresses 'no general federal anti-strike policy,'" while the RLA's "primary purpose is to prevent strikes." Amtrak Br. in Opp. 6 (quoting *Buffalo Forge*, 428 U.S. at 409). *See also* LIRR Br. in Opp. 10. There is no basis in law for this distinction. Neither federal labor statute encourages strikes; both protect strikes as lawful self-help. The Court has long recognized that "[p]eaceful primary strikes and picketing incident thereto lie within the core of protected self-help under the Railway Labor Act." *Trainmen v. Terminal Co.*, 394 U.S. 369, 386 (1969). And just last term the Court reaffirmed that "[our] cases have read the RLA to provide greater avenues of self-help to parties that have exhausted the statute's 'virtually endless' dispute resolution mechanisms than would be available under the NLRA." *TWA v. IFFA*, 109 S.Ct. 1225, 1233 (1989) (citations omitted).

4. Finally, respondents understate the impact of the injunctions on the protected self-help rights of IAM-represented Eastern employees as guaranteed by *Burlington Northern v. Maintenance Employes*, 481 U.S. 429 (1987). *See* LIRR Br. in Opp. 4-5. After all, they argue, the striking Eastern employees can still appeal to unspecified "third parties," and the court of appeals did not "permanently enjoin the threatened sympathy strike." *Id.* at 4.

But even that court readily "agree[d] that it is somewhat anomalous that secondary picketing is allowed by *Burlington Northern*, but considerably undercut in its effectiveness by the type of injunction entered here." Pet. App. 27a. The court of appeals readily agreed, too, that "'without the expectation that picket lines would be honored, picketing is of little practical effect.'" *Id.* (quoting *Western Maryland R.R. Co. v. System Board of Adjustment*, 465 F. Supp. 963, 975 (D. Md. 1979)). And as this Court held in *Buffalo Forge*, with specific reference to injunctions against sympathy strikes pending

arbitration, "even temporary injunctions very often permanently settle the issue." 428 U.S. at 412.

CONCLUSION

For the reasons stated above and in the petition, *certiorari* should be granted.

Respectfully submitted,

Of Counsel:
ALLISON BECK
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20036

JOSEPH GUERRIERI, JR.
(Counsel of Record)
RICHARD RUDA
MICHAEL G. DZIALO
GUERRIERI, EDMOND & JAMES
1150 17th Street, N.W.
Washington, D.C. 20036
(202) 296-7002
Attorneys for Petitioners

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